DEPARTMENT OF CRIMINAL LAW AND CRIMINAL PRACTICE.

EDITOR-IN-CHIEF,
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Assisted by
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LASCELLES *v.* GEORGIA.[2] ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

Interstate Extradition.

A fugitive from justice who has been surrendered by one State of the Union to another State, upon requisition charging him with the commission of a specific crime, has, under the Constitution and laws of the United States, no right, privilege or immunity to be exempt from indictment and trial in the State to which he is returned, for any other or different offence from that designated in the requisition, without first having an opportunity to return to the State from which he was extradited.

Opinion by Mr. Justice JACKSON.

[1] On receiving the following annotation from E. Clinton RHOADS, Esq., before the decision of the Supreme Court, it was my intention to publish the same in THE AMERICAN LAW REGISTER AND REVIEW, accompanying the annotation with a note, in which I should have endeavored to combat the principle that a man extradited from one State to another cannot be tried on a different charge than that set forth in the warrant of extradition, a principle for which Mr. RHOADS so forcibly contends. The final settlement of the question by the Supreme Court of the United States in an opinion by Mr. Justice JACKSON, has rendered it unnecessary that I should add anything further on the subject. It is well, however, that the readers of THE AMERICAN LAW REGISTER AND REVIEW should know all that could be said on the other side. And, therefore, I have requested that Mr. RHOADS' annotation, as originally submitted to me, should be published, adding thereto a supplementary note containing abstracts from the opinion of Mr. Justice JACKSON, showing the reasons which have induced the Court to finally determine that they will not apply the principles expressed in the case of *in re* Rauscher to interstate extradition, because there is a fundamental difference between two States of the United States and two independent and sovereign nations.

GEO. S. GRAHAM.

[2] 148 U. S., 537. Decided April 3, 1893.

THE RIGHTS OF A PRISONER EXTRADITED FROM ONE STATE TO ANOTHER TRIED ON A DIFFERENT CHARGE FROM THAT CONTAINED IN THE WARRANT OF EXTRADITION.

The reason of the theory that one extradited from one State for one offense cannot be tried for any other is that the accused, being a peaceful resident of the asylum State, cannot justly be deprived of his liberty save by due process of law; that the process of law invoked to deprive him of that liberty is the executive warrant for his surrender based upon certain necessary formalities; that both the warrant and its attending formalities are authorized under the Constitution of the United States and Section 5278 of the Revised Statutes; and that when for any reason the proceedings under the warrant have come to an end, the citizen is entitled to be restored to the liberty of which that warrant deprived him.

There are cases of which Kerr *v.* Illinois, 119 U. S., 436, and Mahon *v.* Justice, 127 U. S., 700, are types which decide that the kidnaping of the defendant, and thereby bringing him forcibly into the jurisdiction where he is tried, furnished no defense to the accused. While even this seems an abuse of legal process, there is a clear difference between the rights a defendant would have upon a trial of a case when his original arrest had been by virtue of extradition proceedings, and, on the other hand, where the defendant had been either kidnaped or fraudulently induced to come within the jurisdiction. See *Re* Cross, 43 F. R., 517.

At first the preponderance of authority seemed to be in favor of the doctrine that the offense for which the defendant had been extradited was immaterial; once in the State he could be tried on any charge.

One of the most important authorities is the case of *In re* Noyes, 17 Alb. Law Journal, 407 (1878).

The prisoner was extradited from Washington City to New Jersey, the demanding State, and indicted for crimes not the basis of the extradition.

Judge Nixon, for the United States District Court of New Jersey, refused to discharge the prisoner upon habeas corpus, and ruled the case substantially upon two grounds:

(1) That the private injury involved in the wrongful arrest is no answer to the indictment for a crime.

(2) That the principles regarding international extradition were not involved.

The opinion in this case is also a very instructive argument. As the case of *In re* Rancher, 119 U. S., 407, had not been decided, it might have been argued on the authority of Adriance *v.* La Grave, 59 N. Y., 110 (1874), that the same rule would be applied to international extradition.

The case of *In re* Noyes is followed by the courts of New York in Martin *v.* Woodhall, 4 N. Y. Supp., 539. Also in the late case of People *ex rel.* Post 19, N. Y. Supp., 271 and Com. *v.* Johnson 12 Co. Ct. R., Pa. 263.

The case of Hackney *v.* Welsh, 107 Ind., 253, was ruled upon the same principles, though somewhat different in its facts. A prisoner charged with crime in Michigan

came voluntarily into Indiana—requisition from Michigan to Indiana—escaped and fled to Ohio; requisition from Indiana to Ohio. Upon this proceeding he was acquitted in Indiana. The question to be decided was, could he then be held by the Indiana authorities to answer the requisition from the Governor of Michigan? and it was held that the prisoner could be kept in Indiana and returned to Michigan by the authority of the Michigan requisition. See also People *v.* Sinnott, 20 Alb. L. J., 230.

The next case of importance is State *v.* Stewart, 60 Wis., 587. The defendant was extradited from Indiana to Wisconsin upon the charge of larceny. He was acquitted of this charge and rearrested and convicted of false pretenses; this conviction was upheld. These are followed by a large number of cases which decide practically the same thing: State *v.* Ham, 4 Texas App., 645. Moore on Extradition, § 642, *et seq.*, contains an able discussion of the question, and endorses the doctrine of the principal case. See also Hawley on Interstate Extradition (1890).

All these cases make a distinction between international extradition and interstate rendition.

Since the decision of the Supreme Court in the case of *In re* Rauscher, 119 U. S., 407, although that case was one of international extradition, the theory that one extradited from one State to another cannot be tried except for the crime or crimes mentioned in the warrant of extradition, has been regarded with greater favor than it was before. Probably the most distinct ruling was in the executive department of New York in *In re* Hope, 10 Alb. Law Journal, 441; 7 N. Y. Cr. R., 406 (1889). Hope had been convicted in Delaware, and had escaped from prison and gone to California. Being extradited from California to New York, served his term in a New York prison and was then claimed upon a requisition from the State of Delaware. Governor Hill, after a well-reasoned decision, based chiefly upon the interpretation of the Rauscher case, discharged the prisoner, and stated as his conviction the following: "The true theory which now seems to be firmly established is that the State should not be allowed to obtain jurisdiction of a fugitive from justice and then to take advantage of that jurisdiction thus obtained, and use it for another and different purpose; that a fugitive surrendered on one charge is exempt from prosecution on any other; that he is in the State by compulsion of law upon a single accusation, and has a right to have that disposed of, that if after his release he remains in the State beyond a reasonable time, he can then be arrested, but not otherwise." The note upon the case in 7 N. Y. Cr., 406, is a valuable one.

The United States Circuit Court for the Southern District of New York, in two cases has adopted the principle of the Hope case: *In re* Baruch, 24 Alb. N. C., 108; *In re* Renitz, 23 Alb. N. C., 69.

This latter case contains a note citing a contrary decision by the local New York Courts, made by INGRAHAM, J.

Outside of New York, the leading early case was that of *re* Cannon, 47 Mich., 481, which was that of a surrender from Kansas to Michigan upon the charge of seduction. This was abandoned, and the defendant rearrested on the ground

of bastardy. This arrest the courts of Michigan refused to sustain. (Reported also with note, 3 C. L. Mag., 229.)

The case of *In re* Fiton, 45 F. R., 471 (1891), C. C. of Vt., WHEELER, J., was a requisition by Vermont upon New York for larceny. There was a waiver by the prisoner of formal defects upon the condition of being tried only for larceny. He was then rearrested in New York for forgery, and upon a *habeas corpus* discharged. The Court said: "That he was deceived or forced into coming would afford no grounds for release in this matter. Inquiry can be made into his rights arising out of the proceedings against him under the Constitution and laws of the United States. . . . The requisition rested altogether upon the constitutionality of these laws, and violation of a right implied out of them would be a violation of them."

In the similar case—*Ex parte* Skills, 50 F. R., 524—the District Court of Minnesota admitted the principle as stated in *re* Fiton, but held that the matter was an objection which could be taken advantage of by an appeal to the State courts.

In re Robinson, 45 N. W. Rep., 257 (1890), was the case of an arrest by a constable upon a warrant issued in Nebraska. The arrest was made in Kansas, and there was a forcible removal to Nebraska. On *habeas corpus* the prisoner was discharged, the Court holding that such an act was equivalent to extraditing upon one charge and trying upon another.

The case of State *v.* Hall, 40 Kansas, 338 (1889), arose upon a motion to quash a second indictment, the Supreme Court of Kansas held the State could not try for a different offense than that charged. See also State *v.* Simmons, Kan., 262; Malcolmson *v.* Scott, 56 Mich., 459; Tennessee *v.* Jackson, 36 F. R., 258; State *v.* Vanderpool, 39 Ohio, 273.

A strong article supporting this view of the case is contained in 24 Weekly Law Bulletin.

The principle which refuses to permit a new arrest upon a different charge, does not prevent variation of the charge which may be necessary for mere purposes of pleading: Hareaud *v.* Territory, 13 Pac. R., 131; 3 Wash. Ty., 131; Waterman *v.* State, 18 N. E., 63; 116 Ind., 51.

The reasoning of these cases seems to the writer to be sound. It is admitted that before an asylum State is justified in delivering the fugitive, the demand must be made by the demanding State in a certain form, and both the executive and the courts have an opportunity, at the instance of the accused, to determine certain matters pertaining to the requisition, for instance:

First.—They may determine whether he is a fugitive: Moore on Extradition, § 562, *et seq.*; Wilcox *v.* Nolze, 34 Ohio (O. S.), 520; *Exp.* McCabe, 46 F. R., 363; Com. *v.* McCandless, 7 Co. Ct. R. (Pa.), 61; Com. *v.* Trach, 3 C. C. R., 115; *In re* Cook, 49 F. R., 833, 146 U. S. 183, 14 Cr. Law Mag., 17.

Second.—Whether the matter charged is a crime: Extradition Cases, 9 Co. Ct. R., Pa. 27.

Third.—Whether the indictment or affidavit is sufficiently specific: Roberts *v.* Reilly, 116 U. S., 95; *In re* Manchester, 5 Cal., 537; *Exp.* Jos. Smith, 3 McLean, 121; Jones *v.* Conard, 50 Iowa, 106; *In re* Mohr, 73 Ala., 503; Hartman *v.* Avaline, 63 Ind., 353.

All these are matters which the

prisoner has a right to have considered before the executive of the asylum State surrenders him. Of what use are all these safeguards if a simple falsehood or groundless charge is to be allowed to suspend them?

In the case of kidnaping from a foreign country, there is no violation of the laws of the United States. The defendant must depend upon his personal rights upon the place of his residence. (In the Kerr case, this would have been Peru.) In interstate rendition, however, the matter is different. The prosecutor in Philadelphia, and the accused in Chicago, hold their personal rights under the same federal constitution. Any violation of that right is a violation of the very law upon which the rendition is made. These considerations seem to answer the argument that if a man kidnaped from a foreign country has no personal rights, a fortiori, a person brought from another State has none.

Even if it be admitted that the governor of the asylum State acts merely in a ministerial way in surrendering the fugitive within his State, and that the States of the Union cannot treat with each other as independent nations under an extradition treaty, but practically as different counties under one State I do not see that there is justification for a surrender for one charge and trial in the demanding State for another charge. If the requisition process be considered equivalent to an ordinary warrant, the analogy would not sustain the proposition, for it is elementary law that, save in exceptional cases, the defendant may be arrested only upon a warrant describing the charge, and followed by a preliminary hearing. When these safeguards are not followed the prisoner will be relieved upon a *habeas corpus*, or by quashing the indictment.

E. CLINTON RHOADS.

SUPPLEMENTARY NOTE.

ABSTRACTS FROM THE OPINION OF MR. JUSTICE JACKSON IN THE PRINCIPAL CASE.

"Now, the proposition advanced on behalf of the plaintiff in error in support of the federal right claimed to have been denied him is that, inasmuch as interstate rendition can only be effected when the person demanded as a fugitive from justice is duly charged with some particular offence, or offences, his surrender upon such demand carries with it the implied condition that he is to be tried *alone* for the designated crime, and that in respect to all offences other than those specified in the demand for his surrender, he has the same right of exemption as a fugitive from justice extradited from a foreign nation. This proposition assumes, as is broadly claimed, that the States of the Union are independent governments, having the full prerogatives and powers of nations, except what have been conferred upon the general government, and not only have the right to grant, but do, in fact, afford to all persons within their boundaries an asylum as broad and secure as that which independent nations extend over their citizens and inhabitants.

"If the premises on which this argument is based were sound, the conclusion might be correct. But the fallacy of the argument lies in the

assumption that the States of the Union occupy toward each other in respect to fugitives from justice the relation of foreign nations, in the same sense in which the general government stands toward independent sovereignties on that subject; and in the further assumption that a fugitive from justice acquires in the State to which he may flee some State or personal right of protection, improperly called a right of asylum, which secures to him exemption from trial and punishment for a crime committed in another State, unless such crime is made the special object or ground of his rendition.

"To apply the rule of international or foreign extradition, as announced in United States *v.* Rauscher, 119 U. S., 407, to interstate rendition, involves the confusion of two essentially different things, which rest upon entirely different principles. In the former the extradition depends upon treaty contract or stipulation, which rests upon good faith, and in respect to which the sovereign upon whom the demand is made can exercise discretion, as well as investigate the charge on which the surrender is demanded, there being no rule of comity under and by virtue of which independent nations are required or expected to withhold from within their jurisdiction the right of asylum. In the matter of interstate rendition, however, there is the binding force and obligation, not of contract, but of the supreme law of the land, which imposes no conditions or limitations upon the jurisdiction and authority of the State to which the fugitive is returned.

"If a fugitive may be kidnaped or unlawfully abducted from the State or country of refuge, and be thereafter tried in the State to which he is forcibly carried, without violating any right or immunity secured to him by the Constitution and laws of the United States, it is difficult to understand upon what sound principle can be rested the denial of a State's authority or jurisdiction to try him for another or different offense than that for which he was surrendered.

"It is questionable whether the States could constitutionally enter into any agreement or stipulation with each other for the purpose of defining or limiting the offenses for which fugitives would or should be surrendered."